JD(SF)–44–04
Seattle, WA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

PROVIDENCE ALASKA MEDICAL CENTER

and Case 19-CA-28803

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 341

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John H. Fawley, Esq., of Seattle, Washington,
for the General Counsel.

Jerome L. Rubin, Esq., (Stoel Rives)
Seattle, Washington
for Respondent.

Kevin Dougherty, General Counsel,
Anchorage, Alaska,
for the Union.

DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: I heard this case in trial at Anchorage, Alaska, on March 16 and 17, 2004. On July 25, 2003, Laborers' International Union of North America, Local 341 (the Union) filed the charge in Case 19-CA-28803 alleging that Providence Alaska Medical Center (Respondent) committed certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). On September 30, 2003, the Regional Director for Region 19 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that Respondent violated Section 8(a)(1) and (5) of the Act. Respondent filed a timely answer to the complaint denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses and having considered the post-hearing briefs of the parties, I make the following:[1]

[1] The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

Findings of Fact and Conclusions

I. Jurisdiction

Respondent is an Alaska corporation with an office and place of business in Anchorage, Alaska, where it is engaged in the business of operating health care facilities in the State of Alaska, including a facility in Anchorage, Alaska. During the 12 months prior to issuance of the complaint, Respondent received gross revenues in excess of $250,000. During that same time period, Respondent purchased and received shipped goods valued in excess of $5, 000 from outside the State of Alaska. Respondent admits and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. Background and Issues

On November 7, 2001, the Board certified the Union as the exclusive collective-bargaining agent of the skilled maintenance employees employed by Respondent at its Anchorage facility.[2] The parties had begun negotiations for a collective-bargaining agreement in the fall of 2000, prior to the Board certification. The complaint alleges that the parties reached agreement on a collective-bargaining agreement on February 28, 2003.

The complaint alleges that Respondent violated Sections 8(a)(1) and (5) of the Act by failing and refusing to sign the alleged agreed upon collective-bargaining agreement. The answer denied the commission of any unfair labor practices. Respondent alleges that ratification by the Hospital's management group was a condition precedent to reaching agreement and that this condition was not met. Respondent's management group rejected the proposed contract prior to ratification by the bargaining unit. Further, Respondent argues that if any unfair labor practice was committed, it was committed in December 2002, more than 6 months prior to the filing of the instant charge.

B. Facts

Prior to the certification in November 2001, in the fall of 2000 Respondent began negotiations with the Union and Operating Engineers Local 302 for an initial collective-bargaining agreement for its skilled maintenance employees. The Operating Engineers withdrew from these negotiations in the fall of 2001. The Union and Respondent met on approximately 20 occasions between the fall of 2000 and February 28, 2003, when tentative agreement was reached on a collective-bargaining agreement.

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[2] The appropriate bargaining unit certified by the Board is:

All skilled maintenance employees, including the electrician and plant operator employees, employed by the Employer at its 3200 Providence Drive, Anchorage Alaska, facility; excluding all managerial employees, confidential employees, and all other employees, guards and supervisors as defined in the Act.

At the outset of negotiations, Michael Gallagher, the Union's business manager and chief spokesperson, notified Respondent that the Union would present the negotiated agreement to the bargaining unit employees for ratification. It is undisputed that Respondent did not mention ratification by its senior management group at that time. Throughout the negotiations the subject of union security was a key issue separating the parties. The Union was seeking a "union shop" or "agency shop" where all employees would be required to pay dues to the Union. Respondent, on the other hand, wanted "to preserve employee choice." At least as early as the winter of 2001, the parties had agreed to a "voting procedure" whereby the employees would vote for ratification of the contract and *also* vote whether to accept either the Union's proposed union-security clause or the Respondent's proposed clause providing for voluntary union membership, as part of the contract. Although Respondent had tentatively agreed to the split-voting procedure in the winter of 2001, it continued to voice objection to mandatory union membership. In August of 2002, the parties had a heated discussion about the Respondent's objection to mandatory union membership and whether the teachings of the Catholic Church were inconsistent with mandatory union membership.

Scott Jungwirth, who took over as Respondent's chief negotiator beginning in the fall of 2001, testified that he notified the Union on December 19, 2002, that any agreement had to be ratified by Respondent's management group. According to Jungwirth, he informed Gallagher that Respondent had a senior management committee that needed to ratify the contract. According to Jungwirth, Gallagher acknowledged that fact.[3] Vince Huntington, Respondent's administrator and one of its negotiators, testified that at the December 19, 2002, session Jungwirth reiterated that Respondent's negotiators did not have the authority to bargain away union security. According to Huntington, Jungwirth stated that Respondent had a firm position against mandatory union membership. Huntington did not recall that the term ratification was used but he testified that Jungwirth stated that Respondent's senior management would not approve the proposed union security provisions. According to Huntington, whom I do not credit, Respondent had made it clear from the start that its human resources director, regional CEO and Providence Alaska CEO had to approve any contract language. Huntington testified that Gallagher was frustrated but Huntington did not recall what Gallagher said. Gallagher denied that the authority of Respondent's negotiators was discussed at this meeting. I credit Gallagher's testimony. As will be seen below, when the subject of higher management approval was actually mentioned, Gallagher reacted strongly and questioned whether he should be negotiating with higher management.

On February 14, 2003, Jungwirth made a written proposal to the Union, which was withdrawn. At this meeting, Russ Grange, Respondent's human resources director, told Gallagher that Respondent's senior management committee, of which he was a member, had to ratify the agreement. Gallagher said that maybe he should be negotiating with that three-person committee rather than the negotiating committee. Respondent's negotiating committee took a

[3] Jungwirth testified that he did not recall the subject of approval by Respondent's management committee being discussed at the August 2002 meeting. Gallagher testified that he did question Jungwirth as to whether Respondent's negotiating committee had authority to agree to a contract but that there was no mention of management approval until the February 14, 2003 bargaining session. According to Gallagher, he felt that Respondent was stalling in negotiations and, therefore, he questioned whether the bargaining team had authority. Jungwirth answered that the negotiators had the proper authority. Accordingly, based on the testimony of the lead negotiators, I do not give any credence to the testimony of other witnesses that suggests Jungwirth mentioned the necessity of approval by Respondent's management at the August 2002 meeting.

caucus. When Respondent's negotiators returned, Gallagher asked whether the committee had the authority to negotiate and close the deal. Jungwirth assured Gallagher that his committee had that authority. The parties then continued to negotiate. Thereafter, Jungwirth made a written offer, which was later withdrawn. The written offer proposed a wage increase, management's offers on remaining issues except for a new proposal for on-call employees and "all prior TAs [tentative agreements] except Article 3 [union security] (will take to ratification vote if Union prefers)." Jungwirth withdrew this offer prior to acceptance by the Union. Respondent contends that the reference to ratification is a reference to approval by Respondent's senior management officials. The Union contends that the words "ratification vote" refer to ratification of the contract by the bargaining unit employees and the secondary vote on a union-security clause. Jungwirth, even in his own notes from February 28, referred to "approval" by the senior management committee three times and did not use the terms "ratification" or "ratification vote". Further, Jungwirth admitted that the management committee would not be so formal as to hold a vote. Thus, I find the February 14 reference to a "ratification vote" is to a Union-held ratification vote.

On February 28, 2003, Jungwirth presented the Union with a written offer which proposed wage increases, "all TAs, management's offers on remaining issues" except for a new proposal for on-call employees, and a new proposal on "strike language." This proposal was accepted by the Union. According to Jungwirth's notes, Gallagher acknowledged that Respondent's negotiators "had to take the contract language back to the senior hospital executives for approval." According to Jungwirth's notes, he told Gallagher, "We have to take the language back for approval – just like you have to take the language back for approval." I give no weight to Jungwirth's self-serving conclusion that Gallagher "acknowledged that approval of senior management" was necessary. It is suspicious that Jungwirth made no other notes even though the bargaining session lasted approximately three hours and a tentative agreement was reached.[4] Jungwirth gave no explanation for why he made a written offer to the Union, which he knew would be rejected by Respondent's senior management. Gallagher testified that he did not know that approval of the management committee was necessary. To buttress this testimony, Gallagher testified that ***had*** he known that management approval was required, he ***would have*** waited for such approval before submitting the contract to his members for ratification.[5]

Thereafter, Jungwirth worked with John Landerfelt, the Union's business agent, to prepare a full written agreement. Jungwirth never stated to Landerfelt that approval by Respondent's senior management was required. Landerfelt, with information obtained from Jungwirth, prepared a full written collective-bargaining agreement for ratification by the bargaining unit employees. However, the contract did not contain a union-security clause. Landefelt prepared a separate document containing the two options for union security. Landerfelt also prepared a dual ballot whereby the employees would vote to accept or reject the

[4] Jungwirth's bargaining notes are sparse. His notes for February 14 make no mention of the discussion of the negotiating team's authority to negotiate and close the deal. Respondent did not offer the notes of any other member of its bargaining team to substantiate its claim that clear notice was given to the Union that senior management's approval was a condition precedent to any contract.

[5] As will be seen below, on the morning of the scheduled ratification vote, Gallagher received notice that Respondent's senior management committee had refused to approve the proposed contract. Based on the timing of these events, Gallagher chose to hold the ratification vote despite knowing that Respondent had rejected the contract.

proposed contract and then vote whether the Union's or Respondent's union-security clause should be included in the contract.

Respondent's witnesses do not take issue with the contract prepared by Landerfelt. Jungwirth admitted that Landerfelt's document accurately reflected his agreement with the Union. As stated above, Respondent contends that the contract was contingent on approval or ratification by Respondent's senior management committee. On March 18, just prior to the Union's ratification vote, Jungwirth faxed Gallagher a letter stating that Respondent's senior management group did not approve the language of the tentative contract. Union security was the major issue, but not the only issue raised. Gallagher decided to hold the ratification vote anyway and the employees voted to accept the contract. The employees also voted to include the Union's proposed union security language in the contract. On March 20, 2003, Gallagher notified Jungwirth that the employees had ratified the agreement and approved the Union's proposed union-security clause for inclusion in the agreement. Gallagher stated, "we trust that Providence will respect the employees by implementing the Agreement reached with Providence management on February 28, 2003." Gallagher did not mention the fact that Respondent's management committee had rejected the contract nor did he challenge Respondent's ability to do so. Despite requests from the Union, Respondent has not implemented the wage rates or other terms of the February 28 tentative agreement.

From March 20 to July 25, 2003, Gallagher and Jungwirth attempted to resolve the dispute about union security. They discussed various options to generate revenue to compensate the Union for the expected loss of dues payments. They also discussed a religious exemption to union security. However, the parties were unable to settle the union security issue and on July 25, 2003, the Union filed the instant charges. Respondent contends that by engaging in such discussions the Union waived its argument that a complete agreement had been reached.

C. Analysis

Section 8(d) of the Act explicitly requires the parties to a collective-bargaining relationship to execute "a written contract incorporating any agreement reached if requested by either party." *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941). It is well established that an employer's failure to reduce to writing an agreement reached with a union constitutes an unlawful refusal to bargain, id. "When an oral agreement is reached as to the terms of a collective-bargaining contract, each party is obligated, at the request of the other, to execute that contract when reduced to writing, and a failure or refusal to do so constitutes" a violation of Section 8(a)(5) of the Act. *Liberty Pavilion Nursing Home*, 259 NLRB 1249 (1982); *Interprint Co.*, 273 NLRB 1863 (1985). "It is well established that technical rules of contract do not control whether a collective-bargaining agreement has been reached." *Pepsi-Cola Bottling Co. v. NLRB*, 659 F.2d 87, 89 (8th Cir. 1981). Rather, the crucial inquiry is whether there "is conduct manifesting an intention to abide and be bound by the terms of an agreement." *Capital Husting Co. v. NLRB*, 671 F.2d 237, 243 (7th Cir. 1982). The obligation to execute a collective-bargaining agreement arises only after the parties have reached a meeting of the minds on all substantive issues. See e.g., *Buschman Co.*, 334 NLRB 441, 442 (2001).

In determining whether underlying oral agreement has been reached, the Board is not strictly bound by technical rules of contract law but is free to use general contract principles adopted to the bargaining context. *Americana Healthcare Center*, 273 NLRB 1728 (1985). The burden of proof is on the party alleging the existence of the contract. *Cherry Valley Apartments*, 292 NLRB 38 (1988).

The law is clear that when an agent is appointed to negotiate a collective-bargaining agreement that agent is deemed to have apparent authority to bind his principal in the absence of clear notice to the contrary. *Sands Hotel & Casino, 324 NLRB 1101 (1997), enfd. 172 F.3d 57 (9th Cir. 1999); University of Bridgeport*, 229 NLRB 1074, 1074 (1977); *Metco Products, Inc. v. NLRB*, 884 F.2d 156, 159 (4th Cir. 1989); *Hyatt Regency New Orleans*, 281 NLRB 279, 282 (1986). An agent may lawfully be invested with the limited authority to negotiate a collective-bargaining contract, which is subject to ratification by the employer. Such limitation upon the agent's authority, however, must be disclosed to the Union before agreement is reached. *Aptos Seascape Corp*., 194 NLRB 540, 544 (1971). In *Ben Franklin National Bank*, 278 NLRB 986 at fn, 2, the Board stated " a principal may limit its agent's negotiating authority by affirmative, clear, and timely notice to the other party that any tentative agreement is contingent upon subsequent ratification" [emphasis added].[6] This rule, which imposes no hardship upon the principal, is dictated by the statutory policy of promoting industrial peace by encouraging collective bargaining. Clearly, the statutory policy would be thwarted by permitting a principal, after his agent has reached agreement, to state for the first time that the latter's authority was limited and that the agreement was subject to ratification. *Aptos Seascap,* id. at 544.

In *Active Transportation Co*., 340 NLRB No. 47 (2003), the respondent-employer claimed that the contract was contingent on its receiving certain work from a certain customer. The administrative law judge held, with Board approval, that where the employer failed to provide clear and unambiguous notice to the union concerning an alleged condition precedent, the employer was obligated to execute the agreement reached by the parties. The judge stated in relevant part:

> In this situation, however, vague and ambiguous language does not suffice. If a party seeks to condition an agreement on the happening of some event, it must explicitly make the other party aware of such a condition.
>
> It would appear quite likely that if Respondent insisted upon such a material condition, it would have referred to the condition in correspondence with the Union. Likewise, if Respondent had brought up such a condition during negotiations, it appears likely that the Union would have made some mention of it when corresponding with Respondent.
>
> The claimed condition precedent affected a very important matter, namely, the date when and if the agreement would take effect. A matter that important would excite more communication between the parties than the documents reflect. Id. slip op. at 9.

In the instant case, Respondent did not mention approval of the management committee until after more than two years of bargaining. Further, when questioned about the authority of his negotiating committee, Jungwirth stated that they had the authority to negotiate and close the deal. In my opinion this does not satisfy the Board's requirement of clear and unambiguous notice to the Union. While Respondent now argues that it is not inconsistent for its negotiating team to have the authority to bargain but still have to seek ratification or approval by senior management, Jungwirth did not make this distinction to the Union. As in the *Active Transportation* case, there was no mention in any of the correspondence between the parties of any limitation on the authority of Respondent's negotiators or any condition of management approval. Respondent's offers of a contract settlement contained no language even hinting of a requirement of approval by senior management. The final contract offer accepted by the Union, made no mention that the offer was contingent on approval by the management

[6] See also, *University of Bridgeport*, 229 NLRB 1074 (1977); *Cablevision Industries*, 283 NLRB 22 (1987); *Induction Services*, 292 NLRB 863 (1989).

committee. The only document mentioning management approval was a note written by Jungwirth, a note not seen by anybody else. Suspiciously that notation contains no other information regarding a three-hour bargaining session in which a tentative agreement was reached.

As Respondent correctly points out, the Board has never held that notice of a condition precedent has to be given at the outset of negotiations. In *University of Bridgeport*, *supra*, 229 NLRB at 1074 the Board stated that "this ambiguity could have easily been avoided if the [employer] had simply stated in advance of negotiations that any agreement was subject to the final approval of its board of trustees." However, the Board did not state that notice was required prior to negotiations. Rather, the Board stated that the employer could not, after his agent had reached agreement, state for the first time that the agreement was subject to ratification, id. at 1082. In *Sands Hotel & Casino, supra,* 324 NLRB 1101*,* the violation was based on a finding that "at no point during the . . . contact negotiations with the [unions] did either [employer representative] inform representatives of either labor organization that the parties consummated collective-bargaining agreement was tentative and not binding on [the employer] until approved by corporate officials or attorneys." 324 NLRB at 1109.

In *AFSCME Council 71 (Golden Crest)*, 275 NLRB 49 (1985), the Board dismissed a complaint against a union when the union insisted the contract was tentative until ratified by its membership. The Board found that the charging party-employer was aware, or reasonably should have been aware, that the authority of the union negotiators was limited to negotiations and could not, in the absence of ratification, bind the respondent-union to a contract. The union's chief negotiator had stated at the third of four negotiation sessions that he was "pretty sure [he] could go back and get it ratified by the membership." The administrative law judge found, with Board approval, that "[union] ratification is a normal and usual part of the bargaining process". Thus, the Board found adequate notice that the proposed agreement was contingent upon ratification by the union's membership. 275 NLRB at 54.

In *Mid-Wilshire Health Care Center*., 337 NLRB 72 (2001), cited by Respondent, the Board adopted an administrative law judge's dismissal of a complaint against an employer who refused to sign a tentative agreement. Although the employer did not notify the charging party-union of the condition precedent prior to negotiations, the judge, with Board approval, found that the employer's had "clearly and unambiguously conveyed to the [charging party-union] that [Respondent's president's] approval was a condition precedent to any final and binding collective-bargaining agreement, id. at 79-81. the administrative law judge stated, with Board approval, "if negotiators on the other side are apprised in advance of a requirement that any final and binding agreement is dependant on approval by the [principal] and that the agreement fashioned by the parties is only a tentative one, then either party has the right to reject it after presentation to its principal. *Seiler Tank Truck Service,* 307 NLRB 1090 (1992). I find that the reference to "in advance" means prior to tentative agreement and not prior to commencement of negotiations.

However, Respondent's defense here fails because clear and unambiguous notice was not given. Two weeks prior to reaching tentative agreement, Respondent's negotiators mentioned approval of senior management but when questioned about their authority stated that they had the authority to negotiate and "close the deal." On an earlier occasion, Jungwirth had assured the Union that Respondent's negotiator's had full authority to negotiate the contract. Neither Jungwirth nor anyone else on his negotiating team ever clearly stated that the February 28 tentative agreement was subject to ratification or approval by Respondent's senior management.

I find no merit in Respondent's contention that the Union waived its rights by continuing to negotiate with Respondent after Respondent had refused to honor the February 28 agreement. The statutory policy encouraging collective bargaining would be frustrated if a union was required to refuse to attempt to settle or resolve differences in fear of waiving its meritorious case. This is particularly true in light of the Supreme Court's admonition that waiver of a union's rights under Section 8(a)(5) must be

clear and unmistakable, and is not lightly to be inferred. *Metropolitan Edison Co.,* 460 U.S. 693, 708 (1983).

I find *Raytown United Super*, 287 NLRB 1165 (1988), cited by Respondent, to be inapposite. In *Raytown* the parties had not agreed on two material terms of the contract. Thus, there was no meeting of the minds and, therefore, no obligation on the employer to sign the alleged contract. In the instant case, Jungwirth admitted that the parties had reached agreement on all terms of the contract. Jungwirth did not dispute the agreement as to the dual voting procedure for union security. Jungwirth's claim was solely that the tentative agreement did not meet with senior management's approval. In the instant case, the parties agreed on all contractual terms, subject to ratification by the bargaining unit. As found above, there was no condition precedent that Respondent's senior management had to ratify or approve the agreement.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2),(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to execute and abide by an agreed upon collective-bargaining agreement with the Union.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist there from and take certain affirmative action to effectuate the purposes and policies of the Act.

The Respondent shall be ordered to execute the 2003-2006 Agreement requested by the Union on March 20, 2003. The Respondent further shall be ordered to comply with the terms of the agreement retroactive to March 20, 2003, the effective date of the agreed-upon collective-bargaining agreement, described above. To the extent that the Respondent has failed to comply with the terms of the above-described contract, it shall be ordered to make whole its employees for any loss of earnings and other benefits they may have suffered as a result of that failure. Also, to the extent that the Respondent has failed to make payments to any benefit funds in the amounts required by the above-described contract, it shall be ordered to make such funds whole in accordance with the terms of that contract, including paying any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure, if any, to make such required payments or contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[7]

ORDER

Respondent, Providence Alaska Medical Center, its officers, agents, successors and assigns shall:

1. Cease and desist from:

   a. Failing and refusing to bargain collectively and in good faith with the Union, by refusing to execute the 2003-2006 AGREEMENT, although the terms and conditions of employment had been agreed upon.

   b. In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

   a. Execute the 2003-2006 AGREEMENT as requested by the Union.

   b. Give retroactive effect to the terms and conditions of the collective-bargaining agreement and make whole its employees and the Union for any losses they may have suffered by reason of the Respondent's refusal to execute the agreement, as set forth in the Remedy section of the Decision.

   c. Upon request, meet and bargain with the Union as the exclusive collective bargaining representative of its employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment and other terms and conditions, and if an understanding is reached, embody such understanding in a signed agreement. The appropriate bargaining unit is:

      > All skilled maintenance employees, including the electrician and plant operator employees, employed by the Employer at its 3200 Providence Drive, Anchorage Alaska, facility; excluding all managerial employees, confidential employees, and all other employees, guards and supervisors as defined in the Act.

[7] All motions inconsistent with this recommended order are hereby denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

d. Within 14 days after service by the Region, post copies of the attached notice marked "Appendix"[8] at its location in Anchorage, Alaska. Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced or covered by other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since March 20, 2003.

e. Within 21 days after service by the Region, file with the Regional Director for Region 19, a sworn certification of a responsible official on a form provided by Region 19 attesting to the steps the Respondent has taken to comply herewith.

Dated: June 9, 2004, San Francisco, California.

Jay R. Pollack
Administrative Law Judge

[8] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated Federal labor law, Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain collectively with Laborers' International Union of North America, Local 341, AFL-CIO by failing and refusing to sign the agreed upon 2003-2006 Agreement.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL sign the 2003-2006 Agreement as requested by the Union and WE WILL give retroactive effect to the terms and conditions of the collective- bargaining agreement and make whole our employees and the Union for any losses they may have suffered by reason of our refusal to execute the agreement, with interest.

WE WILL recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the appropriate bargaining unit described below with respect to rates of pay, hours of employment and other terms and conditions. The bargaining unit is:

All skilled maintenance employees, including the electrician and plant operator employees, employed by Providence Alaska Medical Center at its 3200 Providence Drive, Anchorage Alaska, facility; excluding all managerial employees, confidential employees, and all other employees, guards and supervisors as defined in the Act.

PROVIDENCE ALASKA MEDICAL CENTER

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

915 Second Avenue, Federal Building, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUSTNOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THISNOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S **COMPLIANCE OFFICER, (206) 220-6284**.